

SERVICE DATE – NOVEMBER 22, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 467X)

BNSF RAILWAY COMPANY—DISCONTINUANCE OF TRACKAGE RIGHTS
EXEMPTION—IN BIG STONE, SWIFT, CHIPPEWA, YELLOW MEDICINE, AND
RENVILLE COUNTIES, MINN.

Digest:¹ This decision grants in part and denies in part the petition for exemption filed by BNSF Railway Company (BNSF) to discontinue trackage rights over a 106.7-mile line of railroad. The Board is permitting BNSF to discontinue trackage rights over an 84.93-mile line of railroad owned by Twin Cities & Western Railroad Company between Buffalo Lake and Appleton, Minn., but denying the petition with respect to the portion of the line BNSF owns.

Decided: November 21, 2016

By petition filed August 4, 2016, BNSF Railway Company (BNSF) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue trackage rights over a 106.7-mile line of railroad BNSF claims is owned by Twin Cities & Western Railroad Company (TC&W) between milepost 600.7 at Ortonville and milepost 494.0 at Buffalo Lake, in Big Stone, Swift, Chippewa, Yellow Medicine, and Renville Counties, Minn. (the Line). Notice of the filing was served and published in the Federal Register on August 24, 2016 (81 Fed. Reg. 57,995). On September 12, 2016, TC&W filed a comment clarifying ownership over portions of the Line. We will grant the petition for exemption to the extent it applies to track owned by TC&W, subject to standard employee protective conditions.

BACKGROUND

In its petition, BNSF states that one of its predecessors was granted authority to acquire the subject trackage rights in Burlington Northern Railroad Company—Trackage Rights Exemption—Between Ortonville & Buffalo Lake, Minn., FD 30191 (ICC served June 23, 1983). According to BNSF, the trackage rights agreement permitted it to transport only unit train shipments of grain from a limited number of stations and that the agreement expired in 2008. BNSF states that it has not performed any trackage rights operations over the Line since 2008

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

and that all of the local shippers have continued to receive rail service from TC&W. BNSF, therefore, seeks to discontinue these trackage rights.

TC&W filed a letter seeking to clarify representations made by BNSF. Specifically, TC&W states that it owns 84.93 miles of the Line from milepost 494 at Buffalo Lake to milepost 578.93 at Appleton (the Buffalo Lake-Appleton Segment). TC&W states that it acquired that section of the Line in Twin Cities & Western Railroad—Acquisition & Operation Exemption—Soo Line Railroad, FD 31912 (ICC served Aug. 14, 1991). According to TC&W, Burlington Northern Railroad, a predecessor of BNSF, acquired the remaining 21.77 miles between milepost 578.93 at Appleton and milepost 600.7 at Ortonville (the Appleton-Ortonville Segment) in Burlington Northern Railroad—Purchase Exemption—Soo Line Railroad, FD 32003 (ICC served Apr. 9, 1992). BNSF did not file or seek to file a reply.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without our prior approval. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

It appears that BNSF may, in fact, own the Appleton-Ortonville Segment between milepost 578.93 and milepost 600.7, based on the decision in Burlington N. R.R. Co.—Purchase Exemption—Soo Line R.R. Co., FD 32003 (ICC served Apr. 9, 1992). If so, BNSF's trackage rights would have merged with its ownership once it acquired the Appleton-Ortonville Segment. See Norfolk & W. Ry.—Acquis. Exemption—Consol. Rail Corp., FD 32957 (STB served Aug. 15, 1996) ("Upon conveyance of these trackage rights to [the railroad that owns] the line, the trackage rights will effectively merge with [the railroad's] ownership and cease to exist as separate rights.") However, because acquisition (or purchase) authority is permissive, it is not known if BNSF's predecessor did in fact take ownership of this segment, though TC&W asserts that it did. BNSF has not filed any reply to refute this claim. Given the uncertainty over whether BNSF's trackage rights over the Appleton-Ortonville Segment still exist, the Board will deny BNSF's petition for exemption with respect to the Appleton-Ortonville Segment.² If BNSF in fact acquired this segment—meaning that the trackage rights no longer exist—and instead wants to discontinue service (as opposed to trackage rights) over the Appleton-Ortonville Segment, it must seek that authority.

The Board will grant BNSF's petition for exemption with respect to the Buffalo Lake-Appleton Segment. Detailed scrutiny under 49 U.S.C. § 10903 of BNSF's proposal to discontinue trackage rights over the Buffalo Lake-Appleton Segment is not necessary to carry

² BNSF states that TC&W has taken over BNSF's former operations over the Line, but TC&W contends that any references to it in BNSF's petition apply only to the Buffalo Lake-Appleton Segment of the Line. Thus, it is not apparent whether or how any shippers on the Appleton-Ortonville Segment would be affected.

out the rail transportation policy here. Because the trackage rights are no longer needed by BNSF, granting the exemption will foster sound economic conditions in transportation and encourage efficient railroad management, consistent with 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. While BNSF stopped operations over the Line in 2008, service has continued to be made available from TC&W. No shipper or other interested party has filed in opposition to the petition.³

Under 49 U.S.C. § 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because this is a discontinuance of trackage rights and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the line segments for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances.

Because there will be an environmental review during an abandonment, this discontinuance does not require an environmental review.

It is ordered:

1. We grant in part and deny in part BNSF's petition for exemption, as discussed above.
2. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of trackage rights by BNSF from milepost 494 at Buffalo Lake, Minn., to milepost 578.93 at Appleton, Minn., subject to the employee protective conditions in Oregon Short Line Railroad, 360 I.C.C. 91 (1979).
3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by December 2, 2016, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). Any offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,700. See 49 C.F.R. § 1002.2(f)(25).

³ Because we find that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Petitions to stay must be filed by December 2, 2016, and petitions to reopen must be filed by December 12, 2016.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on December 22, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.